

**Potomac Iron Works, Inc., Debtor-in-Possession and
International Association of Bridge, Structural
and Ornamental Ironworkers, Local No. 16.
Case 5-CA-23643**

September 15, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

Upon a charge filed by the Union on June 22, 1993, and amended on January 12, 1994, the General Counsel of the National Labor Relations Board issued a complaint on February 10, 1994, against Potomac Iron Works, Inc., Debtor-in-Possession, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 12, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On August 17, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 18, 1994, notified the Respondent that unless an answer were received by July 28, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Since in or around 1981, the Respondent has been a debtor-in-possession under the bankruptcy laws of the United States with full authority to continue its operations and to exercise all powers necessary to admin-

ister its business. On November 3, 1993, the Respondent filed with the United States Bankruptcy Court for the District of Maryland a petition for protection under Chapter 11 of the Bankruptcy Code, and since that date Respondent has been a debtor-in-possession under the bankruptcy laws of the United States with full authority to continue its operations and to exercise all powers necessary to administer its business.

At all material times, the Respondent, a Maryland corporation, with an office and place of business in Baltimore, Maryland, has been engaged in fabrication and erection work at its Baltimore Museum of Art jobsite. During the 12 months preceding issuance of the complaint, the Respondent purchased and received at its Baltimore, Maryland jobsite goods valued in excess of \$50,000 directly from points outside the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

From on or about May 6 through on or about May 14, 1993, and on or about June 3, 1993, the Respondent laid off employees Clarence Shaw, Ron Crafton, Ed Crafton, and Ralph Barton, because they formed, joined, or assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.¹

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (3) of the Act by laying off Clarence Shaw, Ron Crafton, Ed Crafton, and Ralph Barton between May 6 and 14 and on June 3, 1993, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their

¹ The complaint inadvertently alleged that "Ron" Barton was laid off on June 3, 1993, rather than "Ralph" Barton. We have corrected this typographical error here.

seniority or other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Potomac Iron Works, Inc., Debtor-in-Possession, Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off employees for engaging in union and other protected concerted activities or to discourage employees from engaging in such activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Clarence Shaw, Ron Crafton, Ed Crafton, and Ralph Barton immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful layoffs of Clarence Shaw, Ron Crafton, Ed Crafton, and Ralph Barton, and notify them in writing that this has been done and that the layoffs will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."² Copies of

the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT lay off our employees for engaging in union or other protected concerted activities or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Clarence Shaw, Ron Crafton, Ed Crafton, and Ralph Barton immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL notify each of the above-named employees that we have removed from our files any reference to their layoffs and that we will not use the layoffs against them in any way.

POTOMAC IRON WORKS, INC., DEBTOR-IN-POSSESSION

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."